Crl.M.No. 42222-M of 2006

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision: 30.08.2006

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Nishan Singh

.... Petitioner

Versus

State of Punjab.

.... Respondent

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CORAM: HON'BLE MRS.JUSTICE NIRMAL YADAV

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Present:- Dr.Anmol Rattan Sidhu, Advocate, for the petitioner.

Ms Sonia Dhillon, AAG, Punjab.

JUDGMENT

As per the prosecution case, on 27.7.2005 at about 7.30 A.M while patrolling the police party spotted one person at the north bank of a bridge sitting on some bags covered with tarpaulin. On seeing the police party he got perplexed and started moving. He was stopped by the police and taken into custody. On inquiry he disclosed his identity as Nishan Singh son of Jaswant Singh, the present petitioner. The investigating officer informed the petitioner that he had a right to get his search made either before the Magistrate or before some gazetted officer. Petitioner expressed his desire to be searched before some higher officer and accordingly consent memo was prepared. DSP was informed to reach at the place of occurrence. Meanwhile, Zora Singh son of Hakam Singh, Jat, resident of village Vakilan

Wala, also reached there and was joined in the investigation. DSP Jasdeep Singh reached the spot at 9.00 A.M. The DSP disclosed his identity and asked the petitioner that there were some bags underneath the tarpaulin and he suspected that the bags were containing some intoxicant. Accordingly, search was made by the DSP and 11 bags of poppyhusk under the tarpaulin were recovered. Each bag contained 39 kilograms 500 grams of poppyhusk. In all 4 Quintals 40 Kilograms of poppyhusk was recovered. Samples from all the bags were drawn and were sealed as per the procedure laid down under the Act. The samples were sent to the Chemical Examiner, for analysis which were found to be poppyheads.

Learned counsel for the petitioner argued that the petitioner has been falsely implicated due to political rivalry in the village. He further argued that mere sitting on the bags covered with tarpaulin does not mean that petitioner was in conscious possession of those bags. There was nothing on record to prove that the petitioner had transported those bags containing poppyheads or he was owner of the same. Therefore, it was not proved that he was in conscious possession of the contraband. In support the learned counsel referred to the cases of State of Punjab Versus Balkar Singh and another, (2004) 3 Supreme Court Cases 582; Raj Kumar Versus State of Punjab, 2005(1) Recent Criminal Reports (Criminal) 70 and Baldev Singh Versus State of Punjab, 2005(1) Recent Criminal Reports(Criminal) 823. Learned counsel further argued that as per the FIR, DSP had asked the petitioner as to whether he would like to be searched by him or by the Magistrate. Such an offer is not valid and is against the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as the Act. The learned counsel further argued that a

perusal of the report of Forensic Science Laboratory would show that the samples are not connected to have been recovered from the petitioner. He referred to the report of the Chemical Examiner wherein as per his opinion contents of exihibits No. 979-P/05 to 989-P/05 were poppyheads. However, a perusal of the details given in the report is of parcels No. 780-P/05 to 789-P/05. Except one parcel i.e. No.979-P/05, which is correct, all other parcels are different than the parcels regarding which the opinion has been given.

On the other hand, learned State counsel argued that the petitioner is a habitual offender. He himself made disclosure statement that he had kept concealed two kilograms of opium and in pursuance thereto, he got the same recovered. On the basis of his disclosure statement, FIR No. 180 dated 29.7.2005 was also registered against him. He further submitted that at this stage, it cannot be said that the petitioner was not in conscious possession as evidence is yet to be led by the prosecution in this regard.

On careful consideration of the rival submissions, I do not find any ground to grant concession of bail to the petitioner. Recovery from the petitioner is quite heavy i.e. 4 Quintals 40 Kilograms. The petitioner is yet to face trial. Proof with regard to conscious possession of the contraband would be produced by the prosecution during trial. All the authorities cited by the learned counsel are with regard to the accused against whom trial had been conducted and it was found that the prosecution had not asked any question from the accused while recording their statements under Section 313 Cr.P.C that they were in conscious possession of opium. As regards the consent, the prosecution is yet to lead evidence in this regard and the trial Court shall consider the same on the basis of the depositions made by the prosecution witnesses. The argument that there is discrepancy in the

number of the parcels mentioned in Forensic Science Laboratory's report, has no merit. It appears to be a clerical mistake. First number of the parcel mentioned in the report is 979-P/05. It appears that instead of figure`9', figure `7' has been written and the parcels number were mentioned as 780-P/05 to 789-P/05. Prosecution may also clarify this fact during trial. Since heavy recovery is shown to have been made from the petitioner, I do not find any merit in this petition, which is hereby dismissed.

(Nirmal Yadav)
JUDGE

August 25, 2006.
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